

CHARGE: 402(a)(2)(A)—while held for sale, the article bore and contained an added poisonous and deleterious substance, namely, DDT, which was unsafe within the meaning of Section 406 since such substance was not required in the production of the article and could be avoided by good manufacturing practice; and 402(a)(4)—the article had been held under insanitary conditions whereby it may have been rendered injurious to health.

DISPOSITION: 2-24-64. Default—destruction.

FISH AND SHELLFISH

29345. Frozen perch fillets. (F.D.C. No. 49233. S. Nos. 6-402 X, 7-544 X.)

QUANTITY: 1,101 unlabeled 8-lb. boxes at Gloucester, Mass.

SHIPPED: These fillets were from fish caught by the fishing vessel "Admiral" in the waters of the Atlantic Ocean outside the territorial limits of Massachusetts, and unloaded at Gloucester, Mass., on 7-30-63.

LIBELED: 8-19-63, Dist. Mass.

CHARGE: 402(a)(3)—contained parasitic copepods when shipped.

DISPOSITION: 10-28-63. Consent—claimed by North Atlantic Fish Co., Inc., of Gloucester, Mass., and reconditioned.

29346. Canned tunafish. (F.D.C. No. 49569. S. No. 59-230 X.)

QUANTITY: 168 cases of 4-lb. 2½-oz. cans at Los Angeles, Calif.

SHIPPED: 6-7-63, from New York, N.Y.

LIBELED: 12-23-63, S. Dist. Calif.

CHARGE: 402(a)(3)—contained decomposed fish while held for sale.

DISPOSITION: 3-10-64. Default—destruction.

29347. Breaded shrimp. (F.D.C. No. 49443. S. No. 28-078 X.)

QUANTITY: 661 cases, each containing 24 10-oz. pkgs., at Detroit, Mich.

SHIPPED: 9-30-63 and 10-7-63, from Kansas City, Kans., by Topco Associates, Inc.

LABEL IN PART: (Pkg.) "Dartmouth Frozen Breaded Shrimp Distributed by Dartmouth Marketing Co., Inc., Chicago, Ill."

RESULTS OF INVESTIGATION: Inspection of the manufacturer of the article, Valley Frozen Foods, Port Isabel, Tex., showed that the article had been prepared and packed under insanitary conditions.

LIBELED: 11-13-63, E. Dist. Mich.

CHARGE: 402(a)(3)—contained *E. coli*, excessive coliforms, coagulase positive staphylococci and a high total bacterial count; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 1-15-64. Default—destruction.

29348. Frozen lobster tails. (F.D.C. No. 45186. S. Nos. 46-514 R, 46-531 R.)

QUANTITY: 863 30-lb. ctns., and 889 ctns., each containing 6 1½-lb. pkgs., at Cleveland, Ohio.

SHIPPED: Between 2-16-60 and 4-12-60, from New York, N.Y.

LIBELED: 12-16-60, N. Dist. Ohio.

CHARGE: 402(a)(3)—contained decomposed lobster tails while held for sale.

DISPOSITION: On 1-3-61, on motion of the United States attorney, an order was filed which permitted the Wouka Distributing Co., Inc., of New York, N.Y., Produce Service, Inc., of Cleveland, Ohio, and the United States Food and Drug Administration to inspect and sample the article. On 3-30-61, pursuant to stipulation, the time for Wouka Distributing Co., Inc., and Produce Service, Inc., to appear, make claim or answer was extended to 5-31-61.

On 4-19-61, Produce Service, Inc., and Skyline Service, Inc., of Cleveland, Ohio, filed a joint claim to the article and admitted that the goods were "decomposed in part." On 5-8-61, on motion of Produce Service, Inc., and Skyline Service, Inc., as claimants, an order was entered pursuant to which Produce Service, Inc., and the United States Food and Drug Administration were permitted to inspect and to segregate and/or sort approximately 1,000 pounds of the article, and the Food and Drug Administration was to supervise the segregation and/or sorting done by Produce Service, Inc., and take such necessary samples of the segregated portions of the article as to determine the effectiveness of the claimants' method and processes of segregation and sorting.

On 5-9-61, the Food and Drug Administration supervised a pilot segregation operation on approximately 1,000 pounds of the article. There were separated out as "reject" approximately 168 pounds of that lot. A representative sample consisting of 200 lobster tails was collected and examined and the segregation procedure was determined to be generally satisfactory.

On 5-26-61, Produce Service, Inc., and Skyline Service, Inc., filed a motion requesting summary judgment, or, in the alternative, an order setting the case for trial in June 1961.

On 5-31-61, Wouka Distributing Co., Inc., filed an answer to the libel in which the firm denied that the article was adulterated, stated that Wouka Distributing Co., Inc., had delivered the article to Produce Service, Inc., on or about 2-16-60 and 4-12-60, stated that since that time Wouka Distributing Co., Inc., had neither possession nor control of the article, stated that Wouka Distributing Co., Inc., was not a party in interest and requested that it be stricken as a party in interest or that, if the court did not grant such relief, it be permitted to defend the action without making claim to the article. On 6-3-61, Wouka Distributing Co., Inc., filed a motion for an order striking Wouka Distributing Co., Inc., as a party in interest *nunc pro tunc* on the ground that it did not have title, possession, or control of the article; the motion requested that Wouka's motion be determined before the motion for summary judgment and further requested that the motion for summary judgment be held in abeyance. On 6-6-61, the Government filed a motion to strike Wouka's pleading of 5-31-61.

On 6-14-61, Produce Service, Inc., amended its claim to the article and stated that Skyline Service, Inc., was the wholly owned subsidiary of Produce Service, Inc., that Wouka Distributing Co., Inc., was the true and lawful owner of the article, that Produce Service, Inc., claimed the article as bailee for Wouka, that the article was in part adulterated, and that the claimant was prepared to abide by and carry out any order of the court pertaining to condemnation, release and/or disposition of the article. On 6-19-61, the Government filed a motion requesting that the Government's previous motion to strike be amended to request that all pleading filed by Wouka subsequent to its answer also be stricken.

On 8-8-61, the court granted the Government's motion to strike the pleadings of Wouka Distributing Co., Inc. On 8-31-61, upon the motion for sum-

mary judgment of Produce Service, Inc., the court condemned the article as adulterated while held for sale after shipment in interstate commerce, and ordered the destruction of the article, excepting, however, any of the article released under bond to be brought into compliance with the law by the claimant. On 9-12-61, an order was filed authorizing the segregation and sorting of the article. On 12-22-61, the segregation operations were completed resulting in the destruction of approximately 5,700 pounds of the article.

FRUITS AND VEGETABLES

CANNED FRUIT

29349. Canned peaches. (F.D.C. No. 49411. S. No. 11-196 X.)

QUANTITY: 897 cases, each containing 24 1-lb. 13-oz. cans, at Blairsville, Pa.

SHIPPED: 7-30-63, from Easley, S.C., by Jones Canning Co.

LABEL IN PART: (Can) "Hilltop Yellow Freestone Peaches Halves in Heavy Syrup * * * Packed in U.S.A. by Jones Canning Company, Easley, S.C."

LIBELED: 10-14-63, W. Dist. Pa.

CHARGE: 402(a)(3)—contained *Drosophila* flies; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 11-29-63. Default—destruction.

29350. Canned plums. (F.D.C. No. 49473. S. No. 33-136 X.)

QUANTITY: 746 cases, each containing 24 1-lb. 13-oz. cans, at Minneapolis, Minn.

SHIPPED: 8-24-63, from San Francisco, Calif., by A. M. Beebe Co.

LABEL IN PART: (Can) "Ranch House Brand Home Style Whole California Red Plums Certified Coloring Added Packed in Heavy Syrup * * * Packed by Old Ranchers Company, Upland, Calif."

LIBELED: 10-16-63, Dist. Minn.

CHARGE: 402(a)(3)—when shipped, the article contained *Drosophila* flies, maggots, and decomposed fruit; and 403(g)(1)—the article purported to be and was represented as canned plums and it failed to conform to the definition and standard of identity prescribed by regulations since it contained artificial color which was not permitted as an ingredient of canned plums.

DISPOSITION: 2-10-64. Default—ordered destroyed or denatured for use as animal feed.

29351. Canned plums. (F.D.C. No. 49420. S. No. 79-614 X.)

QUANTITY: 1,200 cases, each containing 24 1-lb. 13-oz. cans, at Fort Wayne, Ind.

SHIPPED: 8-21-63, from San Francisco, Calif., by Mel-Williams Co.

LABEL IN PART: (Can) "Ranch House Brand El Dorado Home Style Whole California Red Plums Packed In Heavy Syrup * * * Packed By Old Ranchers Company, Upland, Calif."

LIBELED: 10-16-62, N. Dist. Ind.; libel amended 10-30-63.

CHARGE: 402(a)(3)—contained decomposed fruit when shipped.

DISPOSITION: 2-14-64. Default—destruction.

29352. Canned plums. (F.D.C. No. 49439. S. No. 63-796 X.)

QUANTITY: 192 cans, each containing 24 1-lb. 13-oz. cans, at Fargo, N. Dak.